S.B. Civil Revision Petition No.75/06

Khatik Samaj Jalia Doyam & Ors.

Vs.

Radha Krishan & Anr.

Date of Order : 13/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Vishwajeet Mantri, for petitioners

Instant revision petition has been filed by the defendant-petitioners against the order dated 16th June, 2006 whereby their application filed under O.7 R.11 CPC has been rejected by the learned trial Judge.

Plaintiff-respondent filed a suit for seeking permanent declaration and injunction of the suit property referred to in Para 13 and made the following prayer:

> "(क) यह कि घोषित किया जावे कि खटीक समाज जालिया दोयम के सदस्यों व प्रतिवादीगण को वादग्रस्त सार्वजनिक रास्ते पर या उसके किसी भी भाग पर विशेषतया संलग्न नजरी नक्शे में काली रेखाओं से दर्शित स्थान पर जबरन कब्जा कर नीवे खोदने, भवन निर्माण करने का अधिकार नही है एवं न ही वादी के दोनो नोहरो के उत्तरी व पूर्वी द्वार को बंद करने का अधिकार है ।
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> (ख) प्रतिवादीगण व समस्त खटीक समाज के सदस्यों को जरिये स्थाई निषेधाज्ञा निषेध किया जावे कि वे स्वंय व उनके रिश्तेदार, ऐजेन्ट, मुखत्यार, मिस्त्री व मजदूर आदि वादग्रस्त रास्ते जिसे कि संलग्न नजरी नक्शों में काली रेखाओं से दर्शित किया गया है अथवा उसके किसी भी भाग पर जबरन कब्जा कर न तो नीवे खोदे व न ही किसी भी तरह का भवन बनावे व न ही वादी के उत्तरी व पूर्वी दोनों द्वारों को बंद करें व न ही वादी के आवागमन में किसी भी तरह की बाधा उत्पन्न करें एवं यदि वाद दायरी के पश्चात व न्यायालय से आदेश प्रसारित होने के मध्य यदि प्रतिवादीगण नीवे खोद कर निर्माणात कर लेवे तो जरिये आदेशात्मक निषेधाज्ञा निर्माण प्रतिवादीगण के खर्चे पर ध्वस्त कराया जावे ।

(ग) खर्चा वाद दिलाया जावे ।

(घ) अन्य अनुतोष जो वादी के हित में हो प्रदान किया जावे ।"

The defendant-petitioners filed their written statement and raised their objection that since the land, which was referred to in the plaint, of which declaration and permanent injunction has been sought, is the agricultural land, and the Civil Court has no jurisdiction to try the suit and only remedy available before the plaintiff-respondent is to proceed by filing application before the Revenue Courts and also filed application under O.7 R.11 CPC with an objection that since it is barred by statute as referred to under O.7 R.11 CPC, which is evident from plaint itself, the plaint as such was rejected.

Learned trial Judge after going through the contents of the plaint and so also objection raised, recorded a finding that it is own case of the petitioners that it is not an agricultural land and apart from it, they have also constructed their premises over the disputed place way back in 1957 and the land, on which construction has been made, cannot be prima facie construed to be agricultural land and accordingly, rejected their application filed under O.7 R.11 CPC.

Counsel for petitioner contends that in the absence of conversion made under the provisions of law, land will continue to be agricultural, as such the suit was barred under law and could not be tried by civil court and this fact has not been considered by the learned trial Judge while passing order impugned. In my opinion, the submission made is

without any substance.

Learned trial Judge has taken note of the pleading of the plaint which alone was required to be considered to find out the maintainability of suit and recorded a finding based on prima facie material came forward.

I do not find any material irregularity committed by the learned trial Judge in passing order impugned.

Consequently, the present revision fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB